Assessment Review Board

Training Manual

Alberta
MUNICIPAL AFFAIRS

WELCOME

Welcome to your role as a member of an assessment review board for your municipality.

As an impartial adjudicator of complaints regarding municipal assessment, you deliver an important service. Your role on an assessment review board requires that you:

- Understand what is meant by the quasi-judicial nature of an assessment review board
- Understand the roles of an assessment review board and the various participants in a board hearing
- Understand the basic process of property assessment and other types of municipal assessments/taxes
- Understand how to conduct a hearing effectively, efficiently, and fairly

Assessment review boards are in municipalities across Alberta, and it is important that the complaint process be provided in a similar manner throughout the province. Being prepared will help you conduct the hearings in an efficient, professional, and fair manner.

This manual will help you with all aspects of your work as an assessment review board member. Please remember that you are an active participant in the complaint process available to the ratepayers of your municipality. Service, quality, and courtesy are important responsibilities.

Before you begin your work on an assessment review board, please make yourself thoroughly familiar with this manual and other resources such as the Municipal Affairs' workshop, the relevant sections of the Municipal Government Act, and attendant regulations. As you take on your role as a board member, refer to them from time to time as necessary.

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INTRODUCTION

Finding your way around this manual

This manual is organized into four sections. Each section provides information and references that will help you understand key terms and concepts related to your role as a member of an assessment review board.

This manual focuses on property assessment in order to illustrate, describe, and discuss each of the concepts that relate to your work as part of an assessment review board.

How to read acts and regulations

There are special conventions for writing and reading acts and regulations.

Acts are divided into parts

Looking at the contents of an act, you will see that there are Parts (for example, under the *Municipal Government Act* – Part 11, Assessment Review Boards). Sometimes parts are further divided into headings.

In the left-hand margin of the official version of the act, published by the Queen's Printer, are summary notes outlining the contents of each section. These marginal notes do not form part of the act but are a useful way to find sections you may be looking for.

The easiest way to identify an item in the act is by referring to a section number. Sections are often divided into subsections, and further divided into clauses, and occasionally subclauses.

Conventions for reading legislation

The act gives some words particular meanings. Some words in acts and regulations have special meanings. These words are called "defined words" or "definitions." Usually definitions are collected in the first section, or the beginning of a part. Sometimes definitions are used as a kind of shorthand, to avoid repeating long strings of words throughout the act.

Definitions are also used to give special meanings to some words or phrases used in the act – meanings that the word would not otherwise have, or when there might be doubt about the meaning of the word if it did not have a definition. Occasionally, words are defined just for particular sections, particular parts, or for particular purposes. For example, "property" is defined in Section 284 of the act for purposes of assessment and taxation as a parcel of land, an improvement, or both. The definition excludes personal property that would otherwise usually be included in the meaning of the word "property."

Words defined in the act have the same meanings in regulations, unless the regulations modify the meaning to state otherwise. Like section 1 of the Assessment Complaints and Appeals Regulation (AR 238/2000), whenever a defined word is used in the act or regulation you should be able to insert, in place of the defined word, the meaning the word has been given in the definition set out by the act. Case law sometimes provides a definition for a word within an act or regulation. These types of definitions are referred to as "judicial interpretations."

Interpretation of acts and regulations

When an act or a regulation is read by a court of law or a quasi-judicial board, such as an assessment review board, its meaning is being interpreted. The correct reading of the statute and solutions to problems of ambiguity are guided by rules of statutory interpretation.

The Alberta's *Interpretation Act* provides a number of rules of interpretation to assist with various situations.

Section 10 of the *Interpretation Act* sets out the general rule that an enactment, like the *Municipal Government Act* and its related regulations, shall be interpreted as being "remedial and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects." Accordingly, the various provisions of the *Municipal Government Act* should be interpreted not only in their plain and ordinary sense, but also in accordance with the context of the act, its purposes, and the intention of the Legislature. This is called the "ordinary rule of statutory interpretation."

The difference between acts and regulations

Because it is impossible to deal with every situation in an act and to provide a means of regulating special situations, legislatures often give authority for regulations to be made by a Minister, or by Cabinet with the Lieutenant Governor's concurrence.

Acts and regulations have the same legal effect: they are both laws. The usual rule is that a regulation cannot contradict or go beyond the scope of an act, although some acts specifically authorize the Lieutenant-Governor-in-Council to exempt classes of persons or transactions from the act, and to modify or substitute sections of the act by regulation. This helps deal with special circumstances and situations.

Municipal Government Act

The legislative references in this manual are from the *Municipal Government Act* (MGA), Revised Statutes of Alberta 2000, Chapter M-26, with amendments in force as of May 14, 2002.

Copies of the full act are available from the Queen's Printer in either Edmonton, Calgary, or online at www.gov.ab.ca/qp.

It is important to remember that the contents of this guide are an interpretation of legislation. The legislation will always prevail in the event of a challenge.

SECTION

Summary

Section I:
What is an assessment review board?

This section of the manual presents information introducing you to the basic principles, both legal and administrative, behind an assessment review board. It will provide you with a basic understanding of an assessment review board.

This section will help you to understand:

- What an assessment review board is
- How your actions are governed by legislation
- How your actions are governed by case law and the principles of natural justice
- The types of decisions made by assessment review boards
- The procedure by which complaints come before an assessment review board

Section II:
Who is part of an assessment review board?
What are members' roles and responsibilities?

This section of the manual presents an introduction to the roles and responsibilities of the people who serve on, or are connected with, an assessment review board.

This section will help you to understand:

- An assessment review board's members' roles and responsibilities
- How other roles in an assessment review board process affect members
- The issues involving members and their roles on an assessment review board

Section III:
Why should an assessment review board understand assessment and valuation?

This section of the manual presents an overview of assessment through an exploration of its legislative foundation and the key concepts associated with assessment and valuation. It explains why an assessment review board is important to the assessment and taxation process.

This section will help you to understand:

- The legislative foundation of assessment and taxation
- How legislation affects an assessment review board
- Key concepts in assessment

Section IV:
How do assessment review boards function?

This section of the manual presents a detailed overview of the hearing process and procedure used by assessment review boards. It explains the legislative and case law aspects of fair procedure.

This section will help you to understand:

- The process of filing a complaint
- What the clerk must do upon receiving a valid complaint
- What the two parties (complainant/respondent) have to do before the hearing
- What the board needs to consider in preparation for the hearing
- What happens during the hearing
- What happens after the hearing

What is an assessment review board?

An overview

This section provides introductory information and discusses the nature of an assessment review board as an administrative tribunal.

Legislation, regulation, and policy fit together to create the legislative aspect of your role as an assessment review board member. In addition, because you are part of a quasi-judicial body, case law and the rules of natural justice affect the manner in which you review complaints.

Key concepts and terms that relate to this section

Administrative law

Administrative law is the body of rules or principles that govern how statutory delegates exercise their authority. Administrative law relates to the organization, powers, and duties of administrative authorities.

Case law

Case law is "judge-made" law derived through the published records of a court. Case law often relates to legislation as judges are called upon to interpret legislation; however, it need not relate to legislation, as the law may be purely judge-made (i.e., many of the rules of natural justice). Only the federal and provincial courts can make case law. The set of rules that govern the persuasiveness of case law basically follows the hierarchy of the courts, i.e., the higher the court the more persuasive and far-reaching the decision. For an administrative tribunal, any level of court decision is binding provided that it reflects the law of the day and deals with the same situation and cannot be "distinguished" somehow by the facts or the legislation under review.

Evidence

Evidence is the statement and documents that are submitted to prove or disprove any matter of fact. Evidence does not include argument or legal submissions regarding a case.

Fettering discretion

The quasi-judicial function of an assessment review board is a discretionary power. This means that assessment review board members have the discretion to make a decision that reflects their judgment of the case. The exercise of their discretion must not be restricted by policy, but must be based upon the evidence that is presented by the parties.

Jurisdiction

Jurisdiction is the authority granted to an assessment review board, and other tribunals, to make certain legal decisions. If a tribunal acts outside of its jurisdiction, then its actions are called "ultra vires."

Ultra vires

Ultra vires means beyond or outside the authority given by law. An action successfully challenged as *ultra vires* will be treated as though it never occurred. An assessment review board must ensure that it is acting within its jurisdiction.

Quasi-judicial function

Quasi-judicial function describes the function of a tribunal required to act like a court by making decisions that involve the rights of parties. The quasi-judicial function should be distinguished from administrative functions in which no exercise of judgment is required and the outcome is clearly prescribed; for example, issuing a business license. Quasi-judicial functions must be exercised in accordance with the rules of natural justice.

Assessment review board members hear complaints from assessed persons and taxpayers. Board members are not there for their personal opinion as much as for their judgment. And their judgment must be exercised on the specific facts of the case, using their experience without preconceived notions of what should be done and without advocacy. Board members are to come to a fair and supportable conclusion about the validity of the evidence, conduct, and opinion of others.

Rules of natural justice

Natural justice is an area within the field of administrative law that governs how tribunals must operate. There are two main parts to the rules of natural justice:

- *Duty to be fair* describes the obligation to hear both sides of a dispute and includes the duty to be fair.
- *Rule against bias* describes the obligation for decision makers to be objective, impartial, and independent. Breaching a rule of natural justice can cause an administrative tribunal to lose its jurisdiction.

What is an assessment review board?

The background of assessment review boards

Assessment review boards replaced the court of revision with the passage of the *Municipal Government Act* on January 1, 1995. The primary function of an assessment review board is to provide a forum for individuals and corporations to:

- Challenge aspects of their property or business assessment
- Seek exemption from assessment or taxation
- Challenge the imposition of other forms of tax (i.e., local improvement, well drilling, special, and business revitalization zone taxes)

An assessment review board is the first level of formal complaint for all types of property assessment except linear property assessment.

The Municipal Government Board is the second level of formal complaint. It handles appeals of assessment review board decisions, other types of municipal appeals, and linear property assessment complaints.

An assessment review board is an administrative board. This means it is created, empowered, and staffed according to legislation (i.e., the *Municipal Government Act*). It is a statutory body that is created by the Alberta government to perform an independent, adjudicative function.

An assessment review board's function is quasi-judicial or court-like in nature. This requires it to adhere to the rules of natural justice when performing its functions. Independence and impartiality are important characteristics of an assessment review board. As well, the board must follow fair procedures when dealing with any type of assessment matter that requires its decision.

What is the statutory function of an assessment review board?

A "job description" of an assessment review board

The *Municipal Government Act* establishes a municipal taxation system that bases taxes on the value of property. There are two important principles in this taxation system:

- Correctness: Property should be assessed in accordance with the legislative and regulatory rules set by the legislature.
- Fairness and equity: Assessments of similar properties in the same municipality should be similar to each other.

The *Municipal Government Act* uses boards for this process because they can hold hearings during which both sides can be present. Presenting arguments in this type of forum allows all arguments and evidence to be heard. Most assessments are correct, fair, and equitable; however, sometimes disputes arise or people have different perceptions of what is fair, correct, and equitable. These disputes are dealt with using a complaint and appeal process. An assessment review board is the first level of complaint. There are several levels to the process.

An assessment review board's job is to ensure that the assessment of the property is correct, fair, and equitable. It has to follow the rules that govern its actions. To conduct its process fairly, the board must be impartial and independent.

This involves a basic understanding of what complaints are about and a focus on the correctness, equity, and fairness of assessment decisions in the context of municipal taxation. This also invoives looking at the procedures and approaches assessment review boards should use to ensure members follow the correct process and conduct fair hearings.

Role in assessment and taxation

An assessment review board has no involvement in determining tax rates. Municipal councils carry out this role, with bylaws setting tax rates.

Assessors determine the assessment and classification of every property in Alberta and send a notice of assessment to every assessed person. The information on these notices is contained on an assessment roll. The assessment roll is a list of all assessable properties in the municipality and their assessment value as of the valuation date. The tax authorities use the assessment roll value in determining taxes.

What is the quasi-judicial function of assessment review boards?

The general nature and function of the board involves the exercise of a quasi-judicial decision making role that must be exercised judicially, not arbitrarily. The board must make its decisions within the context of legislation, case law, and natural justice.

Ensuring a fair hearing

A complaint to an assessment review board is considered a hearing *de novo*. This means that an assessment review board hears each case before it on its own merit. It must allow the parties a reasonable time to produce all relevant evidence so that the board can consider all of the issues presented as if they have never heard any other arguments or evidence before.

Elements of a fair hearing are contained in the structure and the way in which decisions are made in the hearing. Hearings are a way for the board to gather information. In doing so, boards can weigh evidence, determine facts, and make a decision that is based on the information presented.

Fair procedure

In order to hold a fair hearing the board must also abide by fair procedure when conducting a hearing. Fair procedures entail a number of concepts that work together to ensure the hearing is conducted in a way that does not favour any party involved.

The most important factor in a fair hearing is structure. If a hearing is not structured, it loses an element of standardization and equal opportunity for the parties involved.

Fair procedures also extend to the board members' knowledge of its functions and legislation. Each board member must have a clear understanding of the purpose, functions, and scope of the board in order to make a good decision. Board members must be familiar with the governing legislation, principles of administrative law, and the rules of natural justice.

It is important that assessment review boards follow fair procedures. If they don't, they are at risk of acting *ultra vires*. This may mean having a decision overturned by the courts and having to rehear the case.

What is the jurisdiction and authority of an assessment review board?

General jurisdiction and authority

An assessment review board performs an important role in the assessment complaint process. The board's authority is derived from the *Municipal Government Act*, Part 11. An assessment review board is the initial tribunal charged with the power to hear complaints from assessed persons and taxpayers regarding their assessments. The laws governing assessment review boards, and similar quasi-judicial tribunals, set limits on what the board can do and how it can do it. The main legal decision of an assessment review board is whether to change any of the matters relating to the assessment referred to in Section 460(5) of the act. An assessment review board may only make this decision if it has proper legal authority to do so.

There are three areas that give assessment review boards their jurisdiction:

- Legislative
- Regulatory
- Case law (judge-made law)

Without jurisdiction, assessment review boards cannot make a decision that is binding on any party.

Legislative and regulatory constraints

The statutory nature of an assessment review board requires the board to act within the legislative and regulatory constraints conferred on it by the *Municipal Government Act* and regulations. The board cannot hold a hearing or make a decision about an assessment unless the legislation permits it to do so. Therefore, not every complaint filed to an assessment review board will be heard. The complaint must be in accordance with Section 460 of the *Municipal Government Act.*

The board has no right to inquire, of its own motion, into taxation and assessment matters. The board has no authority to deal with the level of taxes, but to ensure that the basis on which the property is assessed is correct, fair, and equitable in comparison to other assessed properties. For example, if a complainant cites a neighbour's assessment during a hearing that the board thinks is too high, the board cannot change that assessment. Nor can the board change an assessment of the complainant's from a previous year that is not under complaint in accordance with Section 460.

Other legislative requirements include:

- The complaint is not about the assessment of linear property (Section 460(11))
- The complaint was filed in time (Section 461 and 467(1)(a))
- The board makes its decision within 150 days of the assessment notice, or tax notice, as the case may be, being issued (Section 468)
- The required fee was paid (Section 481)

Some of the regulatory constraints are contained in the Assessment Complaints and Appeals Regulation. For example, certain types of complaints will not be heard if they do not comply with the requirements of this regulation to file an issue statement before the hearing (Section 3(1)(c)), and certain evidence cannot be heard if it was not disclosed in accordance with the rules set out in the regulation (Section 5). There are also rules governing whether a complainant must appear in person or can submit their case in writing only (Section 7).

Natural justice

The courts have, over many years, created rules governing the conduct of hearings to ensure fairness. Failure to comply with these rules will give the aggrieved party grounds for further appeal. The rules of natural justice are flexible, but the essential points to remember are outlined below and on the following pages.

Whether legislated or not, the rules of natural justice must be followed and may affect the procedure or outcome of a hearing.

a. Right to be notified of the hearing

The parties involved in the hearing have the right to be notified of the hearing well enough in advance to enable them to prepare. At the end of the hearing, they have a right to be notified of an assessment review board's decision.

b. Right to a public hearing

An assessment review board must hold a public hearing in relation to assessment complaints. Parties to the complaint have the right to make verbal arguments. Even hearings into purely procedural or jurisdictional matters must be held in public.

c. Right to know the cases made against theirs

The parties have a right to know of and respond to anything raised that is prejudicial to their position. They are entitled to know of the written arguments or documents to be raised against their position before the hearing, as well as respond to verbal arguments.

d. Right to have the opportunity to adequately state their case

The parties must be given the opportunity to make written submissions, present arguments, and bring evidence to establish their case. The parties should be given adequate time to make their arguments, and they should not be unduly restricted by the board.

e. Right to be represented by counsel or an agent

An assessment review board must allow either party to be represented by legal counsel or an agent.

f. Right to question the other side and their witnesses

When a board holds a hearing, the parties should be afforded the opportunity to call witnesses and to question the other side's witnesses. The board's presiding officer should prevent rude or abusive questioning of witnesses.

A party may question another participant. Case law has held that questioning is required if necessary to afford a party a fair opportunity to correct or controvert any relevant statement brought forward to his or her prejudice. In addition, it is also proper to question the other party and their witnesses in order to challenge the credibility of a party's evidence and the weight to be given to it.

g. Right to request an adjournment/postponement

Some assessment review boards distinguish between adjournments, postponements, and recesses. An adjournment is a break in a hearing to another day, a postponement is the deferral of the commencement of a hearing, and a recess is a short break in a hearing.

If a board unreasonably denies an adjournment request, this action could be a breach of natural justice and fair procedure. This does not mean that a tribunal must grant all adjournment requests. A tribunal can deny such requests if it has good reason to do so. For example, if one of the parties were requesting an adjournment to delay or frustrate the process, then the board would be justified to deny the request.

Equally, a request for an adjournment to obtain evidence might be refused if the party had adequate time before the hearing to gather evidence.

h. Right to be heard by an unbiased, independent, and impartial decision maker

A decision maker must hear an appeal with an open mind and without being influenced by any external causes. It is enough to disqualify a member if there is a reasonable perception of bias. This exists where a reasonable observer, knowing the facts, would think the member might be biased. An administrative board, when it hears a matter, must ensure that the board members do not have an actual or perceived bias.

A bias exists if a board member has an interest in the outcome or has already made up his or her mind before hearing the appeal. A bias also exists if a decision maker is influenced in the outcome of a decision by a monetary interest, personal interest, or any other interest that would influence the decision maker.

i. Right to have the decision made by the members who heard the whole case

The parties to the appeal have the right to have their complaint decided by the board members who heard the complaint. The board members who hear a case must make the decision on that case. The decision makers must deliberate among themselves to determine the board's decision.

The board members must be present throughout the hearing. No one else can make their decision for them. Board members must not be substituted for other members during the hearing. Board members should ensure that they do not leave the hearing room (i.e., for a break) during the hearing.

If an emergency arises that prevents one of the members from continuing to hear a complaint, the majority of the members remaining on the panel can make the decision. Any member who has to leave during a hearing may not return or participate in the decision in any way if the hearing has continued without the member.

j. Right to have the decision based on the consideration of relevant evidence

The board should only consider relevant facts and evidence to the appeal when making its decision. A board should not base its decisions on evidence that has nothing to do with the question of whether the assessment is correct, fair, and equitable. For example, if an aggrieved person appealed the board's decision and was able to show that those factors considered by the board were unconnected to the complaint and a different decision would result if the factors were excluded, then the decision might be reversed on appeal, or perhaps set aside by a higher court.

k. Board must not fetter its discretion

A board cannot decide how to treat certain types of complaints and then refuse to consider arguments outside that policy. The decision makers must consider each case on its merits and not be bound by an inflexible policy. For example, if a board adopted a fixed policy setting out how certain assessment complaints should be decided and then applies that policy to a complaint, the board has fettered its discretion.

Conclusion

Although any one of the parties concerned may not be happy with the decision of an assessment review board, it is imperative that:

- They feel their individual concerns have been heard
- They have been dealt with in a respectful manner
- The decisions rendered are perceived to be fair and just

As an assessment review board member, you must above all be faithful to your legislation and the principles of case law and natural justice. They govern not only the rules you must apply in making a decision about the complaint before you; it also governs the way in which you conduct yourself. The next section in the manual discusses your roles and responsibilities, as well as the roles and responsibilities of others involved in an assessment review board process.

WHO IS PART OF AN assessment review board? What are members' roles and responsibilities?

This section will help you understand your key role and responsibilities as a member of an assessment review board. It will also explain the roles of others who are part of an assessment review board process.

Establishment of assessment review boards

Municipal councils, pursuant to the *Municipal Government Act* establish assessment review boards. Council appoints members of an assessment review board, prescribing their term of office and remuneration. At least three board members must be appointed to each assessment review board. Councils are also able to establish one-member boards to hear certain types of matters in accordance with the Assessment Complaints and Appeals Regulation. Assessment review board members do not have to be elected members of a municipal council.

Two or more councils may agree to establish an assessment review board that would have jurisdiction to hear complaints in their municipalities.

The role of the presiding officer

The members of an assessment review board choose a presiding officer from among themselves to preside over the hearing and to ensure that the hearing is conducted fairly and in a business-like manner. This member may preside for one, many, or all hearings.

The presiding officer has control over the hearing and can call for adjournments during the hearing if necessary. The presiding officer acts as the chair of the hearing and can be referred to as Mr. or Madam Chairperson.

The presiding officer sets the tone of the hearing by ensuring appropriate behaviour, that questions are relevant, and irrelevant information is minimized. The presiding officer also directs the proceedings to take place according to the agreed order of presentation. The presiding officer should curtail lengthy debates between the board members and the presenting parties. The presiding officer is usually designated as the person to sign the board decision, although each member could also sign the board decision.

The presiding officer is also responsible for ensuring board obligations under the Assessment Complaints and Appeals Regulation are met.

For instance, the presiding officer should:

- Ensure documents presented at the hearing are marked as exhibits and copies are kept for the record
- Ensure that a list of witnesses appearing before the board is prepared (the clerk can be delegated this responsibility)
- Prepare the summary of testimonial (oral) evidence given by each witness with the assistance of the other members for the record
- Ensure copies of any written arguments presented by a party are kept for the record
- Ensure written reasons are prepared when requested for the record
- Prepare the statement of issues heard with the assistance of the other members

The role of an assessment review board member

The role of any assessment review board member is to participate in the process and ensure that decisions are made in a fair and timely manner. The member's responsibilities and roles consist of the following:

- To be informed about their legislative and quasi-judicial responsibilities
- To follow fair procedure and act in accordance with the rules of natural justice
- To listen effectively and make notes during the hearing
- To assist the presiding officer in the preparation of any documents necessary for the record
- To ask questions of the parties for clarification or to get information pertinent to the complaint
- To meet with other board members at the end of the hearing in order to arrive at a decision
- To respect the views of colleagues on the board, to discuss the case objectively, and to make a rational decision
- To keep discussions between board members confidential

The board members must yield to the presiding officer and may ask questions during the hearing with the permission of the presiding officer.

The role of the board clerk

The board clerk is appointed by council and is a designated officer. This person is usually a municipal employee. The role of the board clerk is to comply with his or her procedural duties as set out in the *Municipal Government Act*, the regulations, and the assessment review board bylaw. This includes:

- Accepting complaints for filing
- Collecting the fee, if required by bylaw
- Providing the municipality with a copy of the complaint within 30 days after receiving it
- Ensuring that notices of hearing are accurately prepared (detailing date, time allocated, and location of the hearing)
- Ensuring that notification is provided to the municipality, the complainant, and any assessed person other than the complainant who is affected by the complaint (such a person could be the owner of the property) *at least 14 days before the hearing*, or in accordance with the provisions of the Assessment Complaints and Appeals Regulation
- Ensuring that information requests in relation to a complaint are properly dealt with
- Taking official notes regarding procedure and presence of witnesses as part of the record
- Sending the decision and reasoning of the assessment review board to the parties if it is requested
- Refunding the fees if the assessment review board decision favours the complainant

The role of the board clerk must be kept separate and distinct from other roles the individual may perform, either professionally or personally.

Under the Assessment Complaints and Appeals Regulation, the board clerk may also have to:

- Accept issue statements for filing
- Review issue statements for completeness and notify parties that no hearing will be scheduled if statements are incomplete
- Accept appeals of parties' refusal to file and schedule a hearing before the board for such an appeal
- Accept for filing written presentations in accordance with Section 7 of the regulation
- Provide the parties' written presentation to the board at the hearing

On behalf of an assessment review board, the clerk is also likely to have to provide administrative support to enable an assessment review board to keep a record of each hearing as required by Section 6 of the Assessment Complaints and Appeals Regulation. The clerk must also ensure that matters subject to the regulation are dealt with in accordance with the regulation.

The clerk's role at the hearing is limited to an administrative and record-keeping function, as he or she is not a member of the board itself. Therefore, the clerk does not play any role in the decision making, as that is to be carried out by the members of the board.

Who is part of an assessment review board and hearing process?

The complainant

The complainant is the assessed person or taxpayer who is complaining about his or her assessment, tax status, or other matter. The complainant can be represented by an officer (if a corporation), agent, or a lawyer. Complainants have the right to speak first and make their case. They have the right to respond to anything new raised by the respondent. Their case may also be made through the presentation of evidence from various witnesses.

The respondent

The municipality is usually the respondent at the hearing and has the role of defending the assessment against the arguments of the complainant. Like the complainant, an officer of the municipality, an agent or a lawyer can represent the respondent. Officers will include municipal employees. These people are usually assessors. Presenting evidence from various witnesses may also make the respondent's case; however, repetition should be discouraged.

Other assessed persons affected

Other assessed persons affected by the complaint have status to appear before the board and state their position. They may be for or against the remedy sought by the complainant. They should be treated like any other party during the hearing.

Agents

An assessment review board must allow the complainant, the respondent, and any other assessed person notified of the hearing to be represented by anyone, such as a lawyer, tax agent, etc.

Agents usually perform a representative function. Sometimes agents also perform the role of witness – that is, one who gives evidence. Lawyers are usually prevented by their code of conduct from performing a dual role when representing a client because of a potential conflict of interest.

Officers

Officers are similar to an agent. They are the representatives of a corporation, including a municipality. An officer is not just an advocate, but also someone who is able to speak for and give evidence on behalf of the corporation.

Witnesses

A witness is anyone who gives evidence at a hearing. Any of the parties involved could be a witness, except the board members or board clerk. Witnesses may be required to swear an oath or affirmation.

What are some issues involving members and their roles on an assessment review board?

Board counsel

An administrative board can seek legal advice for itself; however, in doing so, the board must ensure that it does not compromise the impartiality and fairness of the hearing process.

The board should not seek advice from counsel on the merits of the complaint. It should only seek advice on legal questions such as issues of jurisdiction or procedure. If a board seeks legal advice and a new issue or legal principle is raised from this advice, then it should be brought to the attention of the parties. The parties should be given an opportunity to respond.

Counsel to the board must not act in a way that will give rise to the appearance of bias or of fettering the board's discretion. Board counsel cannot be seen to be the decision maker, nor can the board abdicate its role in conducting the hearing to board counsel. Board counsel should not chair the hearing, for example, in cases of adjournment requests, objections to evidence of disclosure, or allegations of bias.

The role of the councillor vs. the assessment review board member

Council members may be asked to serve on an assessment review board. In the "political role," councillors are subject to, and can respond to, outside influences. When councillors are members of assessment review boards they are in a quasi-judicial role, and they are limited to legislative and case law rules. They must make their decision based only on the evidence put before the board during the hearing. Board members who are also councillors must leave their "councillor's hat at home" when dealing with an assessment complaint as an assessment review board member.

Role of an assessment review board member vs. other positions

Assessment review board members are appointed for their knowledge and expertise in various assessment-related topics. Many board members hold other positions in the community that should be kept separate from their role as board member. This does not mean that members cannot rely upon their general knowledge of assessment-related matters, but it does mean that if members rely upon any specific knowledge of a matter that they gained outside the hearing, they must disclose the point to the parties so they have an opportunity to respond. If in doubt, the safest course of action is to disclose.

Independence and impartiality: the rule against bias

Assessment review board members have a responsibility to look at the way they conduct themselves not from their own points of view, but from the perspective of others. Board members must act independently and impartially, much like judges. A decision maker must hear a complaint with an open mind and without being influenced by external forces. A bias exists when a decision is influenced by a monetary or personal interest, or anything else that would influence the decision. Bias can arise from things a board member may have written or said about the case or about the parties.

Decision makers must not only avoid bias, but also avoid creating a perception of bias. A party challenging a board decision in court does not have to prove actual bias; a reasonable perception of bias is enough. A perceived bias exists when the circumstances suggest to a reasonable observer that there may be bias, even though the board member is not actually biased.

The perception that persons other than board members have been actively involved in the decision making process is a common source of bias allegations. The "test" is whether a reasonable observer would think that, in the circumstances, a fair hearing is possible.

Out-of-hearing conduct

In avoiding a perception of bias, board members should not be seen talking with individuals from any of the parties inside or outside the hearing room. Board members should be cautious during breaks and ensure that they are not mingling with any party involved in a complaint. Board members should remember that few places are totally private. Any discussion between board members should take place in a confidential location only. No discussion of the hearing should take place outside the hearing room, except with fellow board members.

In-hearing conduct

All board members have a responsibility not only to be fair, but also to appear fair. This includes not acting inappropriately (rudeness, overly aggressive conduct, lack of impartiality, indiscretion, or closed-mindedness). This has two implications:

- Board members have a responsibility to look at the way they conduct themselves, not only from their points of view, but also from the perspective of others
- Board members should not take criticisms, comments, or advice on the issue of fairness as an affront to their dignity. It may be that a member created an unintended impression.

Body language and tone of voice can convey a wrong message to a complainant. Lack of eye contact, raised eyebrows, an angry, sympathetic, incredulous, or impatient tone of voice can conflict with the words a board member uses. All actions and expressions contribute to the appearance of fairness.

Parties are often willing to accept bad news if they feel that they have been heard through a fair process by an open-minded board. But an air of impatience, indifference, or hostility can ruin that impression. Try to look at the proceedings through the eyes of the parties who may be directly and personally affected by your board's decision.

Conclusion

An assessment review board's role is to make decisions on assessment complaints in a fair and timely manner. Each of the people involved in the assessment review board process have different roles and responsibilities. It is important for board members to know these roles and responsibilities so that they can perform their own job within its scope. It is equally important that board members know the roles and responsibilities of others so they can ensure these are performed within their scope.

WHY SHOULD AN ASSESSMENT REVIEW board understand assessment and valuation?

This section of the manual presents an overview of assessment through an exploration of its legislative foundation and the key concepts associated with assessment and valuation. It is meant to provide you with an understanding of why an assessment review board is important to the assessment and taxation process.

What is property assessment?

Property assessment is the process of assigning a dollar value to a property for taxation purposes. In Alberta property is taxed based on the *ad valorem* principle. *Ad valorem* means "according to value." This means that the amount of tax paid is based on the value of the property.

Property taxes are a primary source of revenue for municipalities. Property taxes are used to finance local programs and services, such as:

- Garbage collection
- Water and sewer services
- Parks and leisure facilities

The municipality is responsible for ensuring that each property owner pays his or her fair share of taxes. Property assessment is the method used by municipalities to distribute the tax burden among property owners in a municipality.

Relationship between property assessment value and property taxes

"Assessment" is the process of placing a dollar value on a property for taxation purposes. This value is used to calculate the amount of taxes that will be charged to the owner of the property. "Taxation" is the process of applying a tax rate to a property's assessed value to determine the taxes payable by the owner of that property.

What is assessed?

Not all property is assessable for property tax purposes. The *Municipal Government Act* outlines what property is assessable for taxation. The act defines property as:

- A parcel of land
- An improvement
- A parcel of land and the improvements to it

Properties that are not assessed and taxed include:

- Publicly owned infrastructure or equivalent privately owned facilities
- Minerals
- Property in Indian reserves
- Property in Metis settlements
- Growing crops

What is market value?

Market value is the price a property might reasonably be expected to sell for if sold by a knowledgeable, willing seller to a willing buyer after appropriate time and exposure in an open market.

Key characteristics of market value are:

- It is the most probable price, not the highest, lowest, or average price.
- It is expressed in terms of a dollar value.
- It assumes a transaction between unrelated parties in the open market.
- It assumes a willing buyer and a willing seller, with no advantage being taken by either party.
- It recognizes the present use and potential use of the property.

It is important to note that the market-value-based assessment is not the sale price. The sale price is an historical fact and is the amount the purchaser agrees to pay and the seller agrees to accept under the circumstances surrounding the sale.

A sale price might not equal market value for any of the following reasons:

- The sale might not have occurred in the assessment year or the date on which the property was valued.
- The purchaser might not have been aware that similar properties were selling for more or less than the price for which the property was purchased.
- The buyer or seller may have been unduly motivated (for example, transferred to another city, needed to sell property as part of a divorce settlement, etc.).
- The sale may have involved a trade, partial interest, special financing, personal property, or assumed leases.

Assessors gather information on ranges of sale prices in the marketplace. This statistical data is used as part of the process for calculating market-value-based assessments.

Sale price information helps to develop market-value-based assessments. Assessments are calculated by analyzing the range of sale prices of groups of properties at a specific point in time. Several sales of similar properties are compared to determine typical market values of specific types of properties that have similar characteristics.

There are three standardized approaches to determine the market-value-based assessment of a property.

Sales comparison approach

This approach is based on the theory that the market value of a property is directly related to the sale price of similar properties. This approach is best suited to residential properties and other types of property that sell often on the open market.

Cost approach

The cost approach is used when the property being valued is new or nearly new, in situations where there are no comparable sales available, or when the improvements are unique or specialized (for example, courthouses, fertilizer blending plants, or large recreational facilities).

The cost approach is based on the assumption that a purchaser would not pay any more to purchase a property than it would cost to buy the land and then rebuild the exact improvements. Values for properties that are assessed using the cost approach are determined by using the following formula:

Market Value of Land + Cost of Improvements (i.e. buildings)
– Depreciation = Total Value of Property

The assessor first determines the market value for the land. The cost of constructing the improvements is then added to the land value. Once the costs of the improvements have been determined, the assessor makes a deduction for depreciation. Depreciation is a loss in value due to any reason. This includes normal wear and tear, a change in needs or style of a building, or even a loss in value because of its location. Depreciation must be subtracted from the cost of the improvements to accurately value the improvements in their current condition.

Income approach

The theory behind this approach is that income-producing properties are bought and sold based on their income-earning potential. This approach is used to assess the value of rental properties, such as apartment buildings or rental office buildings.

Regulated assessment standard

Some types of properties are difficult to assess using a market value-based assessment standard. These properties are difficult to value because:

- They seldom trade in the marketplace. When they do trade, the sale price usually includes non-assessable items that are difficult to separate from the sale price.
- They may cross municipal boundaries.
- They are of a unique nature.

Therefore, it is difficult to arrive at a dollar value based on any of the three previously mentioned approaches to value. The value of these properties is determined by what it is used for, its activity, or its production capability. To arrive at assessed values for these types of properties, rates are assigned for each of the various components that make up each type of property. Alberta Municipal Affairs develops rates for these types of properties, which are referred to as "regulated properties."

There are four types of regulated property:

1. Farm land
2. Machinery and equipment
3. Linear property (appeals go directly to the Municipal Government Board)
4. Railway property

Farm land

Farm land is assessed on the basis of its productive value; that is, the ability of the land to produce income from the growing of crops and/or the raising of livestock. The productive value of farm land is determined using a process that sets a value for the best soils, and then makes adjustments for less-than-optimum conditions such as stones, the presence of sloughs, or topography not conducive to farming practices.

The value of farm property takes four factors into consideration:

1. Agricultural land — This is land that is used for farming operations.
2. Residences — The residence is assessed at its market value. The assessment of each residence located on farm land may be fully or partially exempt from property tax, depending on the total value of the land in a farm unit.
3. Farm buildings — A farm building is any improvement, other than a residence, that is used for farming operations. Farm buildings are exempt from assessment in rural municipalities. In urban municipalities, farm buildings are assessed and then exempted from property tax to a level of 50 percent for both municipal and provincial education tax.
4. Residential site — The residential site is three acres of land surrounding the residence. These three acres are assessed using a market-value-based assessment, as if the three-acre site was a separate parcel of land.

Linear property

Generally, linear property is property that extends itself in lines. These properties have distribution lines or other facilities that travel across municipalities and municipal boundaries. Linear property includes:

- Oil and gas wells
- Pipelines to transport petroleum products

- Electric power systems (generation, transmission, and distribution facilities)
- Telecommunication systems (including cellular telephone systems)
- Cable television systems

The rates for linear property are determined by the province, documented in the Minister's Guidelines, and applied by the Assessment Services Branch of Alberta Municipal Affairs. An assessment review board does not have jurisdiction to hear these appeals. The Municipal Government Board hears all linear assessment appeals.

Manufacturing and processing machinery and equipment

Machinery and equipment includes such things as underground tanks, separators, fuel gas scrubbers, compressors, chemical injectors, and metering and analysis equipment. These items would be found in refineries, chemical plants, pulp and paper plants, and oil sands plants. The local assessor assesses some components of machinery and equipment property while the Assessment Services Branch of Alberta Municipal Affairs assesses other components.

Railway property

The assessed value of railway property is based on a fixed dollar amount per kilometre, based on the annual tonnage transported on the railway right-of-way. Each rail company must annually report the type and length of line in each municipality to the local assessor. Rates are determined by the province, documented in the Minister's Guidelines, and applied by local assessors.

How assessments are prepared

Mass appraisal

An appraisal is an estimate of value. Assessors value properties in Alberta using a method called mass appraisal. Mass appraisal is the process of valuing a group of properties as of a given date, using common data, mathematical models, and statistical tests.

Data collection

Before an assessment can be prepared, property data must be collected. Detailed information about each property is gathered by making on-site visits or by corresponding with the owner of the property. Correspondence with a property owner usually occurs when the assessor is requesting information about commercial, industrial, or rental properties (such as apartment buildings or hotels). Information collected by the assessor in the assessment process is also available from other sources including Alberta Land Titles, the real estate Multiple Listing Service, and financial institutions.

Under Section 295 of the *Municipal Government Act*, a property owner must provide to any information requested by the assessor that is necessary to prepare the assessment or to determine the tax status of the property. A person who fails to provide the information requested is prohibited from making a complaint to an assessment review board or the Municipal Government Board. Section 296 gives the assessor the power to seek a court order to enforce compliance with Section 294 and 295.

Preparation of assessments

The municipal assessor must follow various rules when preparing the assessment. For example, the assessor must:

- Ensure that the assessment reflects the characteristics and physical condition of the property on December 31 of the year prior to the taxation year, and the valuation standard set out in the Matters Relating to Assessment and Taxation Regulation (AR 289/99) (Section 289)
- Follow additional rules for certain specific properties. For example, railways (Section 289(3)), condominiums (Section 290.1), certain types of land (Section 290), strata space (Section 290.2), and linear property (Section 292).
- Comply with the requirements of various regulations that govern the preparation of assessments. For example, the Matters Relating to Assessment and Taxation Regulation deals with the preparation of assessments, and describes the valuation standard for particular types of property.
- Prepare the assessment in a fair and equitable manner (Section 293)
- Ensure that an assessment is not prepared for any property that is exempt from assessment (Section 298)

Another type of assessment called a supplementary assessment is permitted (Section 313 316). The manner of preparing supplementary assessments does not differ from the regular assessments, but does differ in the timing of the assessment and is only available in respect of improvements, manufactured homes, and machinery and equipment.

Assessment classes

After the assessed value of a property has been determined, the property is assigned to an assessment class. This is an important part of the assessment and taxation process. The assessment class determines the tax rate that will be applied to each property, as assessment classes have different tax rates. The assessor for the municipality is responsible for assigning the assessment classes to property. Property is classified according to its actual use. The classes are set out in the *Municipal Government Act*. They are:

Class 1 — residential

Class 2 — non-residential

Class 3 — farm land

Class 4 — machinery and equipment

The assessment roll

An assessment roll is a listing of all assessable properties in a municipality and their assessed values. The *Municipal Government Act* requires each municipality to annually produce an assessment roll. The roll must be completed by February 28 each year.

The assessment roll must contain the following information for each assessed property:

- Assessed person (owner of the property), including name and mailing address
- Location
- Property type assessed (land, improvements, or land and improvements)
- Description of the improvement being assessed (pipeline, structure, etc.)
- Assessed value
- Assessment class
- School support declaration
- Taxable status (total or partial exemption from taxation)

The assessment roll of a municipality will also reflect the assessment of the properties that the Minister is required to prepare (i.e. linear property).

The assessed person

The assessed person is the person who must receive the assessment as well as the person who receives the tax notice. This person is responsible for paying any tax imposed in respect of the property (Section 331). For many properties, the assessed person is the owner. Section 304 should be referred to when determining whom the assessed person is. In some cases, a person other than the owner of the property can be the assessed person.

Assessment notices

Assessment notices are created from the information on the assessment roll. The assessment notice is the document that municipalities send to property owners to tell them about the assessment of their property.

An assessment notice must include the following information (Section 304):

- All of the same information that appears on the assessment roll
- The mailing date
- The date by which a complaint must be filed if a property owner is challenging an assessment
- The name and address of the designated officer with whom a complaint must be filed

Each year every municipality is required to send an assessment notice to every assessed person listed on the assessment roll. Each municipality must publish a notification in one issue of a local newspaper to announce that the assessment notices have been mailed to property owners within the municipality.

Sometimes an error is found on an assessment notice. The assessed person can contact the assessor to correct this information. Corrections can only be made to current-year assessment notices. This means that a person cannot change an error, omission, or wrong description on an assessment notice from a previous year.

Each property in a municipality receives an assessment notice whether it is exempt from assessment and/or property taxation or not. At that point, the assessed person/taxpayer can decide to accept the assessment or to challenge it through an assessment appeal.

Assessment notices can be separate from tax notices that a municipality is required to send out each year. However, they must be sent out no later than the date the tax notices are required to be sent out under Part 10 of the *Municipal Government Act* (Section 310).

Exemptions from taxation

Once the assessment is prepared, taxes can be levied. For the most part, taxation is not an issue that an assessment review board deals with. This is because the board cannot hear complaints about taxes payable or the tax rate (Section 460). However, an assessment review board can make decisions about whether a particular assessed property should be exempt from taxation (Section 460(1)(j)).

Exemptions from taxation are therefore a matter that assessment review board members should be familiar with. Exemption provisions are contained in Sections 361 to 364 of the MGA, and the Community Organization Property Tax Exemption regulation.

How do assessment review boards function?

An overview

This section of the manual presents a detailed overview of the hearing process and procedure used by an assessment review board. It is meant to provide you with an understanding of both legislative and case law aspects of the process. The process of an assessment review board involves six phases:

- The process of filing a complaint
- What the clerk must do upon receiving a valid complaint
- What the two parties (complainant/respondent) have to do before the hearing
- What the board needs to consider in preparation for the hearing
- What happens during the hearing
- What happens after the hearing

Hearing procedure

The hearing procedure involves those things that are prescribed by legislation and the rules of natural justice for the parties involved in an assessment review board hearing. These include the right to:

- Be notified of the hearing and to attend in person
- Have a public hearing
- Know the cases made against their case in advance of the hearing
- State their case
- Be represented by counsel or an agent
- Question the other parties and their witnesses
- Request an adjournment
- Be heard by an unbiased, independent, and impartial decision maker
- Have the decision made by those members who heard the whole case
- Have the decision based on the consideration of relevant evidence
- Have board members treat them with respect

Pre-hearing process

A complaint comes before an assessment review board after going through a sequence of events:

- The property or business is assessed.
- The notice of assessment is sent to the assessed person or taxpayer.
- The assessed person/taxpayer decides to complain about the assessment.
- The complaint is filed with the clerk of the assessment review board. In many cases an issue statement must also be filed with the clerk.
- A hearing is scheduled and the notice of hearing is sent to all parties.
- Parties must exchange their evidence as required by the Assessment Complaints and Appeals Regulation.
- An assessment review board holds a hearing.

Filing a complaint

Who can make a complaint?

An assessed person or taxpayer, or any person acting on their behalf, is entitled to make a complaint about any assessment or taxation in accordance with Sections 460 and 461 of the *Municipal Government Act*. Sometimes the ownership or other relationships to a property change while a complaint is in process. The new owner or other person becomes an assessed person or taxpayer in respect of that property or business (Section 304(3)). If a complaint about the property or business is being dealt with, this person may become a party to any proceedings started by the previous assessed person or taxpayer (Section 478).

What the complaint can be about

A complaint may be about any of the matters set out in Section 460(5). There is no right to complain about a tax rate or about linear property. Appeals on linear property go directly to the Municipal Government Board.

How a complaint is filed

Complaints have to be in writing and explain why the complainant thinks the information shown on an assessment or tax notice is incorrect, unfair, or inequitable. The complaint must include the complainant's mailing address. The assessed person must send the complaint to the municipality's designated officer, whose address is shown on the assessment notice, along with the filing fee (if required).

Fees

If council has established a filing fee, it must be paid within the required time. Otherwise the complaint will not be valid. The council of a municipality may also set fees for obtaining copies of the decision of the assessment review board. Fees must be refunded if:

- The board decides in favour of the complainant
- The Municipal Government Board makes a decision in favour of the complainant upon an appeal

Time limitations on complaints

There are time limits for filing complaints. The time for filing a complaint is the date noted on the assessment notice sent by the municipality. If the assessment notice and tax notice are combined, the date will be noted on the tax notice. A minimum of 30 days is required for all types of complaints (property, business tax, well drilling, etc.), with the exception that local improvement tax complaints must be filed within one year (Section 309).

Under Section 311 of the *Municipal Government Act*, the assessment notices are deemed to have been received by all assessed persons on the same date as the placement of the newspaper publication that assessment notices have been sent to assessed individuals in the municipality.

Under Section 336, the date tax notices are sent must be certified. Thereafter, the certification date is evidence that the tax notices have been sent. The taxation notice is deemed to have been received within seven days after it is sent (Section 337).

Local improvement tax complaints

A complaint about a local improvement tax must be filed within one year of the date that the improvement tax was first imposed or the date it was amended (Section 460(8)). A complaint filed after that date cannot be heard unless an amendment is made to the local improvement tax bylaw.

What the clerk must do upon receiving a valid complaint

Scheduling the hearing

If a complaint is received in time, and the fee, if required, is paid, the clerk must send a copy of the complaint to the municipality within 30 days. The clerk must schedule the hearing giving at least 14 days notice of the date to the municipality, the complainant, and any other person interested in the hearing (who may be the owner of the property or business). A longer notice period is required for some types of complaints as set out in the Assessment Complaints and Appeals Regulation.

Fourteen full days notice does not include counting the day that the notice was received, or the day of the hearing. If the board is using regular mail, it must ensure that there is sufficient mailing time to give the recipient 14 full days. However, if Part 1 of the Assessment Complaints and Appeals Regulation applies, the clerk is required to give at least 45 days notice of the hearing.

What the parties must do before the hearing

The Assessment Complaints and Appeals Regulation sets out rules to get parties to disclose issues and evidence before their hearings take place. An assessment review board must not hear any evidence not disclosed as required by the regulation. This is an important consequence because, if evidence is not presented at the assessment review board level, it may also be excluded from any Municipal Government Board appeal.

As explained below, these disclosure rules vary depending on what the appeal is about.

Assessment review board members need to know these rules because, if a party fails to file or disclose what is required of them, the assessment review board may:

- Have no jurisdiction to hear the case
- Be required to limit the evidence the party can present to what has been properly disclosed
- Be asked to extend the time limits for complying with the filing and disclosure rules

These rules are designed to get parties to engage in a meaningful exchange of information before an assessment review board's hearing. Doing so reduces unnecessary surprises, and therefore adjournments, once the hearing begins. Disclosure is what tells a party the case to which they have to respond. This is a basic aspect of fairness and natural justice. The Assessment Complaints and Appeals Regulation gives the job of making these rules effective to the assessment review boards themselves, primarily by directing them to refuse to hear evidence that has not been properly disclosed.

Levels of disclosure

Primary level: Disclosing the nature of the evidence

The minimum level of disclosure applies to every complaint unless one of the higher levels of disclosure applies. It requires complainants and respondents to disclose to each other the nature of the evidence they intend to present to the board.

The primary level of disclosure applies to:

- Farm land
- Single family residential properties
  (unless more than four tax roll numbers are being grouped in one hearing)
- A local improvement tax
- A special tax
- Well-drilling equipment
- Solely procedural issues like jurisdiction or application to extend or reduce time limits
- Cases where the only issue is the assessed value, and the assessed value is:
  - $250,000 or less for a property assessment
  - $50,000 or less for a business assessment

Secondary level: Disclosing the nature of the evidence plus filing an Issue Statement

This level applies to all complaints that concern property that:

- Is non-residential
- Has an assessed value of $250,000 or less

In addition to the disclosure required at the primary level, complainants in this category must also file an Issue Statement. This must be filed with the clerk of an assessment review board and with the municipal assessor at least seven days before the hearing (Section 2(3)). Issue Statements are explained in the next few pages.

Highest level: Filing an Issue Statement and full evidentiary disclosure

The highest level of disclosure is required when Part 1 of the regulation applies in full. This same part of the regulation also requires each assessment review board to keep a record of its hearing for these complaints (Sections 4 and 5). This level does not apply if the hearing is called on less than 45 days notice to the parties.

It is easiest to understand when Part 1 applies by first listing when it does not apply. Some complaints are excluded from Part 1 (and therefore from the highest level of disclosure obligation) because of the subject matter of the complaint.

The highest level of disclosure does not apply to complaints about assessments of:

- Farm land
- Single family residential properties
  (unless more than four tax roll numbers are being grouped in one hearing)
- A local improvement tax
- A special tax

- Well-drilling equipment
- Solely procedural issues like jurisdiction or application to extend or reduce time limits
- Cases where the only issue is the assessed value and the assessed value is:
  - $250,000 or less for a property assessment
  - $50,000 or less for a business assessment.

Complaints to which the highest level of disclosure applies (assuming 45 days notice of the hearing):

- Non-residential property assessment complaints where the assessed value is greater than $250,000
- Business tax assessment complaints where the assessed value is greater than $50,000
- Residential assessment complaints filed collectively (five or more tax roll numbers)
- Complaints over tax status

Issue statements

When a complainant has to file an issue statement, either because Part 1 applies, or because the secondary level applies (non-residential property assessed for less than $250,000), it must be on the municipality's form and must:

- Set out, in detail, the grounds of the complaint, with supporting facts
- Specify the requested change to the assessment
- Confirm that the complainant and the respondent have discussed the complaint and describe any agreed-upon facts or issues
- If no discussion has taken place, explain why
- Give an estimate of the amount of time the complainant needs to present the case

Full evidentiary disclosure time lines

When Part 1 applies in full the parties must each disclose their documentary evidence, proposed testimony, and any written argument in a more formal manner. The time schedule for this involves the following requirements:

- The complainant's disclosure must take place at least 21 days before the hearing
- The respondent's disclosure must take place at least seven days before the hearing
- The complainant's rebuttal must take place at least three days before the hearing

Extension of time limits

An assessment review board can extend (or reduce) the time limits for filing an issue statement or for disclosing evidence. Parties seeking an extension must apply to the assessment review board. Sometimes a single-member board will hear the request. Since a Section 10 request for an extension is purely procedural, the hearing on a request for a time extension is excluded from Part 1, so no special pre-hearing requirements apply.

The request for an extension should be made to the board prior to the expiration of the time limit in issue. If possible, the board should hold the hearing regarding the request prior to the passing of the time limit. The board is not given the express power to make an order under Section 10 retroactively, although in certain circumstances the board's order may have this effect.

What the board needs to consider in preparation for the hearing

Jurisdiction

An assessment review board, at the outset of a hearing, must first decide if it has the jurisdiction to hear the complaint. If the assessment review board does not have the jurisdiction over the complaint, then it should not hear it. If questions about the board's jurisdiction are raised at the start of the hearing, the board should hear from the parties on the issue. If necessary the board can adjourn to consider whether it has the jurisdiction to proceed. If the board decides that it has the jurisdiction, then it can hear the complaint. If it decides it does not have the jurisdiction to hear the complaint (for example, if the complaint relates to linear property assessment) the assessment review board should dismiss the complaint because there is a lack of jurisdiction. An assessment review board should not hear anything further about the complaint.

Issues that are outside of the jurisdiction of an assessment review board include the following:

- A complaint relating to a tax rate
- A linear property assessment
- A late complaint (although a hearing may be held to determine if the complaint is, in fact, late)
- A complaint unaccompanied by the required fee within the prescribed time
- A complaint not complying with the Assessment Complaints and Appeals Regulation
- A request by one of the parties for costs to be awarded by an assessment review board
- A complaint that is prohibited by Section 295(4) of the *Municipal Government Act*

This list of jurisdictional issues is not exhaustive but is representative of the common jurisdictional issues an assessment review board has to deal with.

In exercising its jurisdiction under the *Municipal Government Act*, an assessment review board must not alter any assessment that is fair and equitable, taking into consideration assessments of similar property or businesses in the same municipality (Section 467(2)).

What you need to make a decision on the merits of a complaint

Assessment review boards hear complaints and make decisions on assessments. It is important that decisions are made within an assessment review board's jurisdiction—in accordance with the *Municipal Government Act*, regulations, and the principles of case law and natural justice.

The main legal decision to be made by an assessment review board is set out in Section 467(1)(b) and (c) of the act. Essentially, an assessment review board must decide whether or not a change is required with respect to any of the assessment-related matters set out in Section 460(5). This is referred to as a decision on the merits of a case.

An assessment review board makes other kinds of decisions as well, not all of which are expressly provided for by the act. For example, an assessment review board has to decide if it has jurisdiction to hear the merits of a case. Section 467(1)(a) gives the board the authority to dismiss a complaint and not hear the merits of the case if the complaint was not made in time. This is an example of a jurisdictional decision. The board may also have to make administrative decisions relating to the scheduling of a hearing or other administrative functions like requiring witnesses to swear an oath before giving any evidence.

As mentioned previously, Section 467(2) states that, in exercising its jurisdiction under the *Municipal Government Act*, an assessment review board must not alter any assessment that is fair and equitable, taking into consideration assessments of similar property or businesses in the same municipality.

What you need to make a decision

In determining an assessment complaint, the board will usually need to consider the following:

- The *Municipal Government Act*
- The relevant regulations
- The assessment review board bylaw
- The relevant assessment or taxation bylaw
- The assessment process and approach used to prepare the assessment

Therefore, a working familiarity with these legislative provisions is important. Also, depending upon the type of assessment or tax at issue, other provisions of the *Municipal Government Act* may need to be considered in order for the board to properly decide upon any complaint. Depending upon the nature of the complaint before the board, the weight and level of consideration that must be given to each of the above documents in the board's decision will be different.

Previous decisions are not to be used as precedents

As a board, you are not bound to follow your previous decisions except to ensure that the assessment is equitable with assessments on similar properties. While an assessment review board is not bound to follow its own previous decisions, consistency is an important aspect of fairness. Taxpayers in similar situations are entitled to similar treatment. If you are going to make a change from past practice or approach, identify your reasons for doing so.

What happens during a hearing?

Outline of meeting procedures

There is no legislative requirement or direction on hearing procedures but the rules of natural justice do dictate a guideline to procedural fairness. The hearing procedure often varies depending on the complexity of the issue, and the preference of the board members, the participants, and if applicable, the participants' lawyers.

Order of presentation

Many assessment review boards use the following order of presentation:

- Complainant
- Questions by the other side and then by board members
- Respondent
- Questions by the other side and then by board members
- Summary by complainant
- Summary by respondent
- Final address to respondent's summary by complainant (rebuttal only)

In addition, if other persons affected by the complaint attend and wish to be heard, the board process can be amended to accommodate them. Often, their presentations will follow the complainant's presentation.

The steps in a typical hearing

The following steps provide an overview of the basic process that is recommended be followed by an assessment review board in a hearing. Steps required by statute or natural justice are indicated as (*Required*) and are distinguished from those steps that are just "recommended."

1. The presiding officer (chair) calls the assessment review board to order. (*Required*)
   The presiding officer asks members of the board to introduce themselves.

2. The clerk reads the assessment complaint filed by the complainant. The presiding officer asks the parties to the complaint to identify themselves by name, and their role in the case, i.e., assessed person, assessor, tax agent, lawyer, other.

3. The presiding officer directs the clerk to administer the oath to anyone planning to give evidence at the hearing, if required. Board members are commissioners for oaths while acting in their capacity. The presiding officer asks the parties if anyone objects to any of the members sitting on the board. (*Required*) If an objection is made by any of the parties, the presiding officer must ask them to explain their reasons for the objection. The board must consider whether the objection has any merit. An allegation of bias alone is not enough. The reason must convince the board that a reasonable, right-minded person would find an apprehension of bias. If the board decides there is no merit to the objection, the parties should be advised of the decision and the hearing should proceed.

4. The presiding officer should ask the clerk whether any person notified of the hearing is not in attendance. If any person given notice of the hearing does not attend, the assessment review board may proceed to deal with the complaint if it is satisfied that all persons required to be notified were given proper notice of the hearing (Section 463).

5. The presiding officer should also ask the clerk if any written presentations were filed in advance of the hearing. This includes any issues statement filed in accordance with the Assessment Complaints and Appeals Regulation. If so, the presiding officer should also ask whether the parties present received a copy. If they did not, the presiding officer should adjourn for such time as is necessary for the other parties to review the written presentation. If everyone has a copy, the hearing can proceed and the presiding officer must decide at what stage to refer to the written presentation. (*Required*)

6. The presiding officer should outline the hearing process to the parties and ask whether there are any preliminary matters that need to be dealt with; for example, adjournment requests, problems with disclosure, jurisdiction, consented-to matters, withdrawals, or procedural issues. If there are such matters, the presiding officer should have the board deal with these matters first unless they can be dealt with in the course of the hearing.

7. The presiding officer should invite both parties, starting with the complainant, to give a brief summary of the nature of the property under complaint and the essence of the complaint.

8. If either party indicates that they want to call evidence that was not discussed as required by the full evidentiary disclosure rules set out in Section 4 of the Assessment Complaints and Appeals Regulation, the board must refuse to hear that evidence. (*Required*) If the complaint is subject to the primary or secondary levels of disclosure,

the board must decide whether it is fair to hear the previously undisclosed or inadequately disclosed evidence. If not, the board may adjourn the hearing to give time for disclosure or it may refuse to hear the evidence if that is the fairest thing to do in the circumstances.

9. The presiding officer asks the complainant to make his or her presentation, and then allows questioning by the respondent followed by questions by the board. This process is repeated for each of the witnesses presented by the complainant. The presiding officer then confirms that the complainant's case has been presented. (*Required*)

10. The presiding officer asks the respondent to make his or her presentation, and then allows questioning by the complainant followed by questions by the board. This process is repeated for each of the witnesses presented by the respondent. The presiding officer then confirms that the respondent's case has been presented. (*Required*)

11. The presiding officer may then call upon the complainant to present any rebuttal evidence, i.e., evidence that responds specifically to evidence raised by the respondent and not otherwise referred to in the complainant's main presentation. (*Required*)

12. The complainant should be given an opportunity to summarize their case and present their argument, if any. The respondent should then be given the opportunity to do the same. The complainant must be given the opportunity to present any argument in rebuttal.

13. The presiding officer confirms with the parties that they have put forward all their evidence. If so, the presiding officer should advise them that the hearing is concluded.

    The presiding officer should quickly confer with other members of the board to determine whether there is need for a deliberation. If not, the decision may be made then and there and the parties should be informed of the decision.

    If a short deliberation is required, the parties can be asked to leave the hearing room if the board does not have a private place in which to confer. If the board believes more time is needed to make the decision, then the hearing should be adjourned to a later date in order for the board to convey the decision. Before adjourning, the presiding officer should ask whether any party requires reasons for the decision.

14. A majority vote constitutes the decision of the assessment review board. The presiding officer should be the one to call the question. A formal vote need not be taken, but some mechanism must be used to determine the majority.

15. The clerk must send the decision of the assessment review board, and the board's reasons, if requested, to the persons notified of the hearing.

Providing customer service

Even though in the course of the proceedings, you will undoubtedly hear similar presentations from many complainants and respondents, treat each as if it is their one experience with an assessment review board. Board members are expected to listen attentively to each individual case and to understand the parties' perspective.

Use techniques to create an atmosphere in which the complainants feel they have been dealt with in a considerate and respectful manner

- Maintain a degree of formality during the board proceedings.
- Always address participants by Mr., Mrs., Ms., or other title.
- Restrict conversation to the subject matter of the appeal.
- Avoid socializing with any of the parties to the hearing before, during, or immediately after the hearing period.
- Always address staff as Mr., Mrs., Ms., etc.

The atmosphere created may influence the parties' perception of a fair and "just" decision.

Use appropriate body language and tone of voice to convey that you are interested and attentive

- Face the person who is speaking – this says, "I am listening..."
- Smile or nod – this says, "I understand you..."
- Use eye contact – this says, "I care about what you are experiencing and I am paying close attention..."
- Avoid any gestures, such as scowling, yawning, raising your eyebrows that could suggest boredom, disagreement, or lack of respect for the perspective being presented.
- Avoid sounding officious, sarcastic, or condescending. Regardless of your personal reaction to what is being presented, a professional manner should prevail.
- An appropriate tone of voice will indicate attentiveness and respect.

Handle difficult situations with care

Members will occasionally need to handle difficult situations. In the course of the hearings, individuals may become defensive, frustrated or angry. By being aware of the changes in verbal or non-verbal behaviour, you can be alerted to the need to deal with the individual's feelings.

Be aware of changes in:

- Body language: for example, red face, gesturing, leaving one's seat
- Voice: i.e., the raising of pitch or volume, abusive language, or sarcasm

By recognizing these symptoms in other people you can avoid being drawn into an emotional exchange. You do not want to become defensive, abusive, or return anger with anger.

Respond to upset behaviour with a professional manner

Acknowledge feelings: "I appreciate your perspective, however…"

Assist to focus request: "So you are asking that the board reduce the value to $87,000."

Provide clarifying information regarding the board's jurisdiction and procedures: "You will be given a chance to question representatives at the end of the presentation."

Deal with serious situations that threaten to disrupt the hearing

If such a situation should occur, the presiding officer should follow the following procedure:

1. Advise the individual(s) that the disruptive behaviour must stop to allow the hearings to proceed in an orderly manner.
2. If the situation continues, advise the individual(s) responsible for the disruption that they will be required to leave the hearing room if the disruption does not immediately stop.
3. If the situation continues, ask the individual(s) to leave the room.
4. If the situation continues, contact the local police and request that the individual(s) be removed from the hearing room.

Presiding officers may choose to call a brief recess to allow for a cooling down period at any time; i.e., following Step 2 above. An intermediate solution for less serious situations is to adjourn the hearing to allow parties or the board time to cool down. As the presiding officers are responsible for maintaining orderly proceedings, they are encouraged to take every precaution to prevent situations from escalating to the point that action under Steps 3 and/or 4 of the above procedure would be necessary.

Adjourning a hearing to respond to the evidence

The board may be required to adjourn a hearing if necessary to give the parties an opportunity to adequately respond to the evidence. However, the board is required to make a decision on complaints relating to property tax within 150 days after the assessment notices are sent out by the municipality. Similarly, for other types of complaints, the board is required to make a decision within 150 days after the tax notices are sent out by the municipality.

In weighing whether to grant a request for an adjournment, the assessment review board must ensure it will be able to conclude the case within this time frame. If not, the board should consider seeking an extension of this time limit from the Minister pursuant to Section 605 of the *Municipal Government Act.*

When the full rules of disclosure apply as set out in Part 1 of the Assessment Complaints and Appeals Regulation, no adjournment is permitted to allow more time for evidence to be disclosed unless an extension of time is granted under Section 10 of the regulation.

Attendance at the hearing

Under Part 1 of the Assessment Complaints and Appeals Regulation a written presentation can be submitted to the assessment review board in lieu of personal attendance. The assessment review board clerk and other parties must receive a copy of the written presentation prior to the hearing. Attendance at the hearing is not required provided the board is satisfied that notice of the hearing was properly given to the individual (Section 463).

Who can appear?

In addition to the complainant, the respondent or other interested assessed persons and each of their agents or representatives have the right to appear.

Requiring witnesses to attend

The board has the power to compel a person to attend to be a witness (Section 465). A party wanting the person to testify will usually ask the board for a notice to attend. The board will want to ensure the person has relevant evidence to offer. Sometimes a person needs a notice to attend so they can get time off work.

Production of documents

The board also has the power to order that a document be produced (Section 465). Usually, one of the parties will ask the board to exercise this power. The board needs to weigh the need for the presence of a person or document against the consequences of potential adjournment.

Rules of evidence

The board is not bound by the rules of evidence or any other laws applicable to court proceedings. This does not mean that the essence of these rules can be ignored. The board has the power to determine the admissibility, relevance and weight of any evidence. Hearsay evidence should be received cautiously.

Preliminary issues involving evidence and disclosure

The Assessment Complaints and Appeals Regulation sets out details and requirements relating to preliminary issues of evidence and disclosure for an assessment review board. The *Municipal Government Act* sets out requirements regarding evidence and admissibility.

The board may be asked from time to time to decide one of these preliminary issues before getting into the evidence regarding the complaint. The board should hear the issues and make a decision when such preliminary issues are raised. Usually, these issues will be raised during the course of the hearing. However, it is possible, particularly under Part 1 of the Assessment Complaints and Appeals Regulation, for a separate hearing to be held on a preliminary issue alone. Often those procedural issues can be dealt with using a one-member assessment review board.

Forwarding complaints directly to the Municipal Government Board

The Assessment Complaints and Appeals Regulation allows the parties to ask an assessment review board to allow a case to be heard by the Municipal Government Board first. That means the case skips over an assessment review board process. This can only be done if:

- The parties consent to this happening
- The assessment review board agrees and directs that the case be heard by the Municipal Government Board

When such a request is made, the assessment review board should consider time constraints, the complexity of the issues involved in the complaint, and other compelling reasons.

External evidence

Generally, the board may only consider evidence properly presented at the hearing. Presentation of evidence at the hearing is necessary to allow the parties an opportunity to challenge the evidence. For example, it can be improper for board members to attend at sites of assessment, where participants are not also afforded the opportunity to attend at the site.

Of course, the board members will have developed somewhat of an expertise in dealing with assessment and taxation issues, so it would be impossible for the board members to entirely divorce themselves from their experience. However, where material evidence external to the hearing would take a party by surprise or affect the outcome of the case in any way, the board must disclose the evidence to the parties, and give them each an opportunity to respond to it.

What happens after the hearing?

Decision and reasons

The board must make a decision, and provide it to the assessment review board clerk to be sent to the persons notified of the complaint hearing. A decision of a majority of the members present at a hearing is deemed to be the decision of an assessment review board (Section 459).

After the end of the public hearing, the board should adjourn to consider their decision. They should do this in private so board members can freely exchange their thoughts on the issues and evidence presented. They should listen to each other's perspectives before coming to a conclusion. Often, all members will share the same view of the case. However, if there are different perspectives, it is easier to come to a consensus if members avoid expressing firm views too early.

Each member should contribute his or her views to the discussion. The presiding officer should ensure that the board deals with each issue raised in the presentations. The decisions reached should be supported by identifiable reasons. Remember, the board can always be asked to provide written reasons for its decision. If the board cannot describe why the decision is being made in a certain way, then it has not finished the job of making the decision.

Often the presiding officer will be able to declare a consensus. If differences remain, the panel should work to resolve the difference. This makes everybody think harder about the issues and evidence involved. If, after further effort, differences remain, then the majority view must prevail.

If the board simply cannot decide right away, it is entitled to take the time it needs to make a decision. However, the board should make its decision as soon as possible. The decision must be made within the 150-day time limit set by Section 468 of the *Municipal Government Act.*

The board must make decisions on complaints relating to property taxes within 150 days after the municipality sends out assessment notices. It must make decisions relating to complaints other than property taxes within 150 days after the municipality sends out tax notices.

Unlike the Municipal Government Board, an assessment review board may not reconsider a decision after it has issued that decision in writing. However, an assessment review board can correct errors or omissions in its decisions under Section 471(2) of the *Municipal Government Act.*

Written reasons for the board decision need only be provided if requested prior to the decision being made by the board. A request for written reasons after the hearing need not be complied with (Section 469(2)).

Written reasons, if requested and provided can reduce the perception of arbitrary or capricious decisions, reinforce public confidence in the tribunal process, and provide parties with the ability to determine whether there are valid grounds for appealing further. In stating reasons, the board should give its underlying reasons; a statement of mere conclusions has been held to be insufficient. Thus, written reasons should deal with the material issues before the board. Reasons must be proper, adequate, and intelligible.

For example, courts have said the following about giving reasons:

- A tribunal may not merely paraphrase the statute. To do so is to state a conclusion rather than the underlying reasons.

- The decision should contain a statement of the facts to which the decision relates. The decision cannot be reviewed satisfactorily if it is not known whether it was influenced by irrelevant facts or failed to take into account relevant facts. Further, if there are conflicting relevant facts, the board should outline which version is preferred, and why.
- The sufficiency of reasons must be considered in the whole context of the decision. This includes not only the nature of the matter or decision by the tribunal, statutory descriptions and directive, relevant instruments and the like, but also the written records, and in some cases, the arguments brought forward.
- Obviously, the reasons must not be based upon irrelevant considerations. Clear and unambiguous reasons clarify the appeal by giving the Municipal Government Board or the courts a good understanding about why the assessment review board came to its conclusions. This will often lead to the decision of the assessment review board being upheld by the Municipal Government Board on appeal.

Presenting a decision

These steps are suggested guidelines when delivering a decision:

- Declare the hearing is over
- Make a clear statement of decision, if one can be made following the hearing
- Provide reasons
- Indicate the decision will be confirmed in writing. You may wish to show the decision form they will receive as well as the board's decision form that is filled out.
- Advise of the right to appeal to the Municipal Government Board
- Thank parties for their presentations

Records of proceedings, Part I, Assessment Complaints and Appeals Regulation

In cases where Part 1 of the Assessment Complaints and Appeals Regulation applies, the assessment review board must keep a record of the hearing, witnesses, arguments, and evidence. After the hearing, it has to develop a written list that identifies the issues from the original issue statement about which evidence was presented or arguments made. All of this is the assessment review board's hearing "record" (Section 6).

If Part 1 of the Assessment Complaints and Appeals Regulation does not apply, a record of proceedings is not required to be kept. The board's written decision required by the *Municipal Government Act* will constitute the record, as will the clerk's notes and any exhibits filed. Individual board members' notes from hearings do not form part of the record.

Right to appeal

There is a right to appeal an assessment review board decision. The next level to appeal is to another tribunal called the Municipal Government Board (Section 470(1)). Sometimes decisions of that board are challenged to the Alberta Court of Queen's Bench and sometimes further through the Appeal Court.

Appealing a decision

The decision of an assessment review board may be appealed by:

(a) An assessed person

(b) A taxpayer

(c) An assessor

(d) A municipality, if the decision being appealed relates to property that is within the boundaries of that municipality

The appeal (in the form of a written statement complying with Section 491) must be sent to the Municipal Government Board administrator no later than 30 days after the decision of the assessment review board is sent to the complainant.

If Part 1 of the Assessment Complaints and Appeals Regulation applies, the assessment review board must provide a copy of the record to the Municipal Government Board within 14 days of being notified of the appeal.

The Municipal Government Board

Like an assessment review board, the Municipal Government Board is also a quasi-judicial board. The *Municipal Government Act* provides that the decision of the Municipal Government Board is final and binding.

Under Section 499 of the *Municipal Government Act* the Board is given the power to make any one of five specific decisions, including the right to dismiss a complaint or appeal not made within a proper time. It can make any decision that an assessment review board could have made, if the hearing relates to the decision of an assessment review board. This is subject to the provision that the Board not alter any assessment that is fair and equitable, taking into consideration assessments of similar property in the same municipality.

Decisions are protected from defects, technical irregularities, or informality if in substantial compliance.

Challenging decisions further

There are also cases when a party can challenge a Municipal Government Board decision through judicial review. The courts may reverse or vary any decision based on jurisdictional error, breach of the rules of natural justice, or serious error of laws.

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ISSN 1705-6314